

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF ENERGY RESOURCES

MASSACHUSETTS SOLAR MARKET –
RPS SOLAR CARVE-OUT II

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AUGUST 26, 2013

**COMMENTS OF
RETAIL ENERGY SUPPLY ASSOCIATION
RE SREC-II FINAL PROPOSED DESIGN**

The Retail Energy Supply Association (“RESA”)¹ hereby submits its comments in response to the Department of Energy Resources’ (“Department” or “DOER”) RPS Solar Carve-Out II Updated Proposed Design presentation (“Presentation”) discussed at the August 12, 2013 Stakeholder Meeting. RESA appreciates the opportunity to comment on this important matter.

INTRODUCTION

RESA is a non-profit organization and trade association that represents the interests of its members in regulatory proceedings in the Mid-Atlantic, Great Lakes, New York and New England regions. RESA members are active participants in the retail competitive markets for electricity, including the Massachusetts retail electric market. Several RESA member companies are licensed by the Department of Public Utilities (“DPU”) to serve residential, commercial and industrial customers in Massachusetts and are presently providing electricity service to customers in the State. As such, RESA and its members have an interest in ensuring that the

¹ RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

creation of a new market Class I Solar Renewable Portfolio Standard (“RPS”) Carve-Out program (“Program”) does not have an adverse effect on RESA members, their customers or the continued success of the retail electric market in Massachusetts.

BACKGROUND

Pursuant to the Green Communities Act, Retail Electricity Suppliers² must provide a specified percentage of electricity generation from renewable energy sources, including solar photovoltaic. In accordance with this requirement, the Department issued final regulations in June 2010 that, among other things, established the current Program (“SREC-I Program”).³

The Department is now engaged in developing a policy to determine what will occur after the capacity cap of the current SREC-I Program is reached. As part of this effort, the Department held a RPS Solar Carve-Out II (“SREC-II”) Updated Program Design (“Updated Design”) Stakeholder Meeting on August 12, 2013 (“Stakeholder Meeting”) at which it presented the proposed design features and regulatory structure for the SREC-II market.⁴

As a follow-up to the Stakeholder Meeting, the Department offered interested parties an opportunity to submit comments on the Updated Design.⁵ RESA hereby submits its comments on the SREC-II Updated Design.⁶

² Capitalized terms used but not defined herein have the meaning provided in 225 CMR 14.02.

³ *See, generally*, 225 CMR 14.01 *et seq.*

⁴ *See* Presentation, at 9-18.

⁵ *Id.* at 22.

⁶ The Department has retained a consulting team that is providing technical policy support in connection with the SREC-II Program design. However, the reports from that consulting team are not yet available. *See* Presentation, at 19. Thus, RESA reserves the right to participate in any technical meetings and/or file additional comments once those reports are issued.

COMMENTS

During the Stakeholder Meeting, the Department identified the following objectives for the SREC-II policy:

- Provide economic support and **market conditions** to maintain and expand photovoltaic (“PV”) installations in Massachusetts;
- **Control ratepayer costs**;
- Maintain robust growth across installation sectors;
- Manage market growth to meet 2020 goal and until the market is better prepared for Class I renewable energy credits (“RECs”);
- Maintain competitive market of diverse PV developers without undue burdens of entry;
- Address financing barriers limiting direct ownership without compromising third-party ownership model; and
- **Minimize regulatory complexity** and maintain flexibilities to respond to changing conditions.⁷

The Department previously determined that the current SREC-I Program “provides a **robust market** demand growth for the solar industry”⁸ and “maintains **market balance**.”⁹ Since the existing SREC-I Program already self-adjusts depending on the pace of solar growth and results in a more stable market by dampening fluctuations, it currently provides economic support and market conditions to maintain and expand PV installations, maintains growth across installation sectors, and maintains a competitive market of diverse PV developers without undue burdens of entry.

⁷ Presentation, at 3.

⁸ See “Minimum Standard: Base Growth Rate” available at: <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/solar/rps-solar-carve-out/adjusted-mechanics-to-the-minimum-standard.html> (emphasis added).

⁹ See “Minimum Standard: Market Balance Adjustments” available at: <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/solar/rps-solar-carve-out/adjusted-mechanics-to-the-minimum-standard.html> (emphasis added).

Nevertheless, despite the relative immaturity of the SREC-I Program, the Department in the month of June alone implemented or proposed sweeping changes that included:

- adopting changes to the Minimum Standard formula, which **increased** Retail Electricity Suppliers' compliance obligations;¹⁰
- issuing Emergency Regulations, which **further increased** Retail Electricity Suppliers' compliance obligations;¹¹ and
- announcing its plans to "create a new separate SREC market (SREC-II) with **separate new** compliance obligation on retail electricity suppliers."¹²

Each of these recent regulatory changes has or will increase ratepayer costs in direct contravention of the Department's stated goal to "**control ratepayer costs**."¹³ Rather than continuing to create an artificial "market" construct that sets SREC prices, the Department should allow competitive forces and the efficient market design of supply and demand to establish the price. In this way, solar developers will compete to provide ratepayers the best price and ratepayers will have an accurate view of the costs of solar installations.

Moreover, continuously altering the Program also increases costs because it "increases regulatory risk and introduces uncertainty regarding the possibility of more changes in the future."¹⁴ As the Joint Committee on Telecommunications, Utilities and Energy ("Joint Committee") recently noted, "[i]nvestment will slow down for both solar development and competitive retail electricity supply in the Commonwealth if the business community feels that

¹⁰ See 225 CMR 14.07(2) (as published June 7, 2013).

¹¹ Emergency Regulations, at 225 CMR 14.07(2).

¹² Massachusetts Solar Market Post-400 MW Solar Program Policy Design Stakeholder Briefing, June 7, 2013, available at: <http://www.mass.gov/eea/docs/doer/rps-aps/doer-post-400-mw-solar-policy-design-stakeholder-review-mtg-060713.pdf> ("Post-400 MW Presentation"), at 18 (emphasis added).

¹³ Presentation, at 3 (emphasis added).

¹⁴ Cf. Report of the Committee on Proposed Changes to the RPS Solar Carve-Out Program (225 CMR 14.00), dated April 25, 2013, available at: <http://www.mass.gov/eea/docs/doer/rps-aps/joint-committee-comments-to-doer-042513.pdf> ("Committee Report"), at 2.

DOER is too willing to make regulatory changes that impact return on that investment after that investment has already occurred.”¹⁵ It is a basic tenant of economics that less investment means less competition and less competition means higher prices.

Accordingly, in order to mitigate the effects of these changes and control ratepayer costs, as discussed more fully below, RESA urges the Department to ensure that the SREC-II Program design provides for as much quantity and cost certainty as possible, accurately accounts for the SREC-I expanded Program cap, provides compliance flexibility and is instituted on a prospective basis only and in a competitively neutral fashion.

I. THE SREC-II PROGRAM DESIGN SHOULD PROVIDE QUANTITY AND COST CERTAINTY

When it adopted the Program, the Department specifically indicated that one of its goals was to minimize ratepayer impacts and reduce costs to ratepayers.¹⁶ However, the modifications to the Program and development of a new compliance obligation, which negatively impact customers and increase costs, appear to contradict this objective. In Massachusetts, nearly all load is served, directly or indirectly, by competitive suppliers, who either provide wholesale service to the electric distribution companies and municipalities or who provide retail service directly to end-use customers. To meet the Program’s obligations, these suppliers enter into contracts for Solar Renewable Energy Credits (“SRECs”).

In deciding what SREC purchases to make, Retail Electricity Suppliers face several risks. If the price of SRECs goes up and no hedges have been purchased, then the suppliers are stuck having to cover compliance obligations in a high price market. It would, therefore, seem prudent

¹⁵ *Id.*

¹⁶ See Solar RPS Carve-Out Straw Proposal Presentation, Public Stakeholder Meeting, Boston, MA, August 26, 2009, available at: <http://www.mass.gov/eea/docs/doer/renewables/solar/solar-rps-carve-out-program-straw-proposal-stakeholder-mtg-corrected-090409-doer.pdf> (“Straw Proposal”), at 3, 5.

to cover at today's SREC prices with a forward purchase and to bundle the cost of those SRECs into the sales price to the customer. Indeed, the Department anticipated that the current SREC-I Program design would create such a market demand.¹⁷ Balanced against this, however, is the risk associated with the imposition of new Retail Electricity Supplier obligations such as those currently being considered by the Department.

Faced with an uncertain regulatory environment, Retail Electricity Suppliers will seek to manage the regulatory risk that the Department will continue to make modifications to their compliance obligations in one of several ways. First, by shortening the length of their retail load serving contracts, perhaps to 12 months or less, Retail Electricity Suppliers and their customers can re-price and re-negotiate at the time of annual renewal; thereby, shifting the risk associated with compliance obligation changes to customers. Alternatively, Retail Electricity Suppliers can offer longer term contracts for electricity with a pass-through for compliance costs. This shifts the regulatory risk from the Retail Electricity Suppliers to customers but also undercuts the Retail Electricity Suppliers incentive for SREC hedging for customers. As a third option, Retail Electricity Suppliers could build a significant risk premium into the cost associated with compliance to ensure that future regulatory changes do not create potentially uneconomic contracts. This risk premium will then be reflected in the prices paid by consumers. By contrast, by setting compliance obligation requirements for an extended period, the Department can send a message that it is safe to continue to invest in the Commonwealth and avoid potential negative impacts to customers.

¹⁷ Straw Proposal, at 8.

Similar to other states, the Department should publish predictable quantity and Alternative Compliance Payment (“ACP”)¹⁸ schedules to allow businesses to manage their affairs more effectively and reduce risk premiums; thus, mitigating costs. A formula that fails to provide an easy and predictable method for determining compliance creates uncertainty that forces Retail Electricity Suppliers to estimate their compliance obligations and to include a significant premium in what they charge consumers to protect against that risk; thereby, increasing prices in contravention of one of the Department’s goals of reducing ratepayers costs. Furthermore, if the compliance obligation is ultimately less than the Retail Electricity Suppliers estimated, customers will have paid more for Program compliance than was actually necessary. Conversely, by providing quantity and cost certainty, the Department can eliminate risk premiums associated with such uncertainty; resulting in lower prices for consumers.

The current SREC-I Program contains a complex formula for determining the amount of SRECs that Retail Electricity Suppliers must purchase in order to satisfy the SREC-I Program’s compliance obligation. Specifically, as of June 7, 2013, the current SREC-I Program’s compliance obligation is determined each year through the following formula:

$$\text{Total Compliance Obligation}_{CY} = \text{Total Compliance Obligation}_{CY-1} + [\text{Total SRECs Generated (projected)}_{CY-1} - \text{SRECs Generated(actual)}_{CY-2}] \times 1.3 + \text{Banked Volume}_{CY-2} + \text{Auction Volume}_{CY-2}$$
¹⁹

While the current SREC-I Program does not provide quantity certainty, in an effort to provide greater cost certainty,²⁰ the Department developed a ten year forward schedule of the

¹⁸ The ACP is the benchmark used by Retail Electricity Suppliers to price the RPS compliance obligation included in their customer contracts.

¹⁹ 225 CMR 14.07(2)(d).

²⁰ Guideline on the Forward Schedule of the Solar Carve-Out Alternative Compliance Payment (ACP) Rate, dated December 28, 2011, available at: <http://www.mass.gov/eea/docs/doer/rps-aps/forward-solar-acp-rate-guideline.pdf>, at 1.

ACP.²¹ The Department’s proposal for the SREC-II Program design also includes an ACP rate schedule that provides cost certainty.²²

However, after the first two (2) years of the SREC-II Program,²³ the compliance obligation will be set by a formula “to match the expected supply of SRECs” for the Compliance Year²⁴ “to achieve 1200 MW by 2020 and to help maintain market balance.”²⁵ In particular, the compliance obligation for each year will be the sum of the following: (a) Installed SREC Supply; (b) Qualified but not installed SREC Supply; (c) Projected New Supply; and (d) Rollover Volumes.²⁶ In determining the expected supply of SRECs, the Department will provide a monthly update of qualified projects with capacities, SREC Factors, Forward Minting Status and actual or estimated commercial operation dates as well as its analysis regarding the determination of the Managed Growth capacity.²⁷ Based on this analysis, the Department will “annually update the *estimated* forward Compliance Obligations for the remaining years of the program.”²⁸ Through this design feature, the Department appears to acknowledge and attempt to mitigate the uncertainty associated with the compliance obligation. Regrettably, this design feature does not extend far enough to have an appreciable effect on the quantity risk and associated premium.

²¹ See 225 CMR 14.08(3)(b)(2).

²² Presentation, at 11.

²³ *Id.* at 16.

²⁴ *Id.* at 17.

²⁵ *Id.* at 9.

²⁶ *Id.* at 17. The Minimum Standard will then be determined by dividing the compliance obligation by the total electrical energy sales by Retail Electric Suppliers for CY-2.

²⁷ Presentation, at 18.

²⁸ *Id.* (emphasis added).

While RESA appreciates the Department's efforts to provide forward estimates, just as an entirely new obligation creates market uncertainty with negative impacts for ratepayers so does a Program design in which the compliance obligation is subject to change. Thus, consistent with the Department's stated policy objective of controlling ratepayer costs, RESA urges the Department to provide both quantity and cost certainty regarding Retail Electricity Suppliers' compliance obligations in the SREC-II Program. Otherwise, customer contracts are likely to include a substantial risk premium to protect Retail Electricity Suppliers from future quantity risk. In particular, RESA requests that the Department adopt one of the following two proposals to eliminate or, at least, mitigate the uncertainty associated with the annual compliance obligation.

First, rather than using a formula with unknown and unpredictable variables to calculate the compliance obligation, RESA proposes that the Department provide a schedule that allows suppliers to know *with certainty* at the time the SREC-II Program regulations are adopted what their compliance obligations will be for the life of the Program. Such certainty will allow Retail Electricity Suppliers to make appropriate forward SREC contracting decisions and eliminate the need to include risk premiums in their customer contracts to cover quantity uncertainty.

Second, if the Department requires flexibility to respond to changing conditions, RESA proposes that, at the time the new SREC-II Program regulations are adopted, the Department publish a schedule that establishes the compliance obligation for the first three (3) years of the Program and then, each year, establish the compliance obligation for the compliance year three (3) years forward. If the Department does not provide quantity certainty for several years, customers with multi-year fixed price arrangements will still be faced with increased risk premiums to account for the quantity uncertainty in the later years of those agreements.

Conversely, by establishing a three (3) year forward compliance obligation, the Department can eliminate this risk premium in the majority of customer contracts; thereby, effectively meeting the policy objective of controlling ratepayer costs associated with the Program.

II. THE SREC-II PROGRAM DESIGN SHOULD ACCURATELY ACCOUNT FOR THE EXPANDED SREC-I PROGRAM CAPACITY CAP

To meet the Governor's ultimate goal of 1600 MW of installed capacity under the Program, the SREC-II Compliance Obligation Schedule set forth in the Presentation provides for a Target Solar End-of-Year Installed Capacity of 1200 MW as of 2021.²⁹ However, the Department recently issued Emergency Regulations that will expand the capacity cap of the SREC-I Program by as much as 273 additional MW above the previous 400 MW cap.³⁰ If the Department does not account for the expanded SREC-I capacity cap in establishing the capacity for the SREC-II Program, the overall installed capacity and, as a result, the compliance obligation associated therewith, will exceed the Governor's goal by as much as 273 MW. As a consequence, ratepayers will pay more for the Program than was originally intended in direct contravention of one of the Department's objectives of controlling ratepayer costs. Thus, RESA requests that, when the Department establishes the SREC-II Compliance Obligation Schedule, it account for the expanded capacity cap established for the SREC-I Program or, in the alternative, provide a *clear* policy mechanism for accounting for the expanded cap that *controls ratepayer costs and exposures*.³¹

²⁹ Presentation, at 16.

³⁰ See RPS Solar Carve-Out SQAs Under Review (updated July 12, 2013), available at: <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/solar/rps-solar-carve-out/current-status-of-the-rps-solar-carve-out-program.html>.

³¹ Cf. Post-400 MW Presentation, at 10.

III. THE SREC-II PROGRAM DESIGN SHOULD PROVIDE COMPLIANCE FLEXIBILITY

The SREC-I Program regulations provide:

A Retail Electricity Supplier may use RPS Class I Renewable Generation Attributes or Solar Carve-Out Renewable Generation Attributes produced in one Compliance Year for compliance in either or both of the two subsequent Compliance Years, subject to the limitations in 225 CMR 14.08(2) and provided that the Retail Electricity Supplier is in compliance with 225 CMR 14.00 for all previous Compliance Years.³²

The Department has interpreted this provision as requiring Retail Electricity Suppliers with excess SRECs in a year who have not meet their non-solar Class I RPS obligations in that same year to use those excess SRECs to satisfy their non-solar Class I RPS obligations. This interpretation unnecessarily increases the cost of overall RPS compliance because SRECs are more expensive than RECs.³³ In addition, this interpretation forces Retail Electricity Suppliers to increase the cost that customers pay for compliance to account for the risk that a portion of their non-solar Class I RPS compliance will have to be met with more expensive SRECs in direct contravention of the Department's stated goal to "*control ratepayer costs*."³⁴

In order to control ratepayer costs, RESA requests that, when establishing the SREC-II Program, the Department provide Retail Electricity Suppliers the flexibility to determine the most cost effective way to undertake market-driven measures to optimize their portfolio and satisfy their compliance obligations under the Program. In particular, RESA requests that the Department permit Retail Electricity Suppliers to pay the ACP to satisfy their non-solar Class I RPS obligations even in years in which they may have excess SREC-Is or SREC-IIs. Further,

³² 225 CMR 14.08(2).

³³ Compare 2013 RPS Class I ACP of \$65.27 per MWh with 2013 RPS Class I Solar Carve-Out ACP of \$550.00 per MWh (available at: <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/rps-aps/retail-electric-supplier-compliance/alternative-compliance-payment-rates.html>).

³⁴ Presentation, at 3 (emphasis added).

RESA requests that the Department permit Retail Electricity Suppliers to pay the ACP to satisfy their SREC-I obligations even in years in which they may have excess SREC-IIs and vice versa. Lastly, RESA requests that the Department permit Retail Electricity Suppliers to use SREC-Is to satisfy their SREC-II obligations. By providing this flexibility, the Department can reduce the cost of overall RPS compliance and decrease the risk premiums imposed on customers; thereby, controlling ratepayer costs.

IV. THE DEPARTMENT SHOULD PROTECT EXISTING RATEPAYER AND COMPETITIVE SUPPLIER EXPECTATIONS

Another important design element of any new program is to ensure that it does not disrupt or otherwise harm existing stakeholder expectations. Thus, RESA encourages the Department to ensure that any new Program design is implemented prospectively only and in a competitively neutral fashion.

As the Department most certainly appreciates, the competitive electricity market in the Commonwealth continues to advance and Retail Electricity Suppliers continue to enter into contractual obligations, often with multi-year terms of service, while new regulations are being proposed, amended and promulgated by the Department. However, Retail Electricity Suppliers do not take market positions or enter into agreement terms with customers based simply on the announcement that a regulatory change may occur or even based on the release of proposed regulatory revisions. Rather, since announced or even proposed regulatory revisions are subject to change based on legislative considerations as well as the regulatory input process, Retail Electricity Suppliers take market positions and enter into agreements based only on actual regulatory requirements officially promulgated by the governing regulatory authority. In this way, customers are not exposed to unnecessary price increases and/or pricing volatility as a result of speculative regulatory changes that may never be adopted or that may be significantly

modified through the regulatory process before such changes ultimately become effective.

Accordingly, Retail Electricity Suppliers have entered into and continue to enter into agreements with customers based on the current SREC-I Program design. Only once the Department officially promulgates the new SREC-II Program regulations will Retail Electricity Suppliers modify their market positions and/or the terms of their agreements with customers to account for any new or modified regulatory requirements. Thus, RESA requests that the Department ensure that any new Program design is instituted on a prospective basis only.

Furthermore, because Retail Electricity Suppliers enter into multi-year agreements, even if the Department institutes any new SREC-II Program design prospectively, customers with fixed price arrangements will still be faced with unexpected price increases to account for the new obligation. When a new obligation is imposed, it impacts existing contracts that were priced based on the prior obligation and may have a term of service that extends over multiple years. While Retail Electricity Suppliers may have contractual and legal means to address change of law circumstances, these mechanisms will have a direct and immediate financial impact to customers, especially residential, governmental and institutional customers, who have contracted for a fixed price and will now be subject to new and unanticipated charges that are not within their budgets. These unanticipated charges place customers in an untenable position as they may be required to retroactively pay these costs per the terms of their contractual agreements. The retroactive cost impact is particularly difficult for local and state governments, as well as, institutional customers like hospitals and colleges that generally have limited budgetary flexibility. Moreover, they undermine the customers underlying confidence that the competitive electricity market can provide and deliver the type of pricing products they desire and have contracted to meet their energy needs. Accordingly, similar to when the SREC-I Program was

originally instituted,³⁵ RESA requests that the Department create a compliance exemption, subject to Retail Electric Suppliers providing appropriate documentation, from the new SREC-II Program compliance obligation until the expiration of any contracts existing as of the effective date of the regulations establishing the new Program. In this way, the Department can establish a paradigm that protects existing stakeholder expectations.

CONCLUSION

For all of the foregoing reason, RESA urges the Department to ensure that the SREC-II Program design provides for as much quantity and cost certainty as possible, accurately accounts for the SREC-I expanded Program cap, provides compliance flexibility and is instituted on a prospective basis only and in a competitively neutral fashion.

Respectfully submitted,
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³⁵ See 220 CMR 14.08(3)(b)(3) (setting the ACP Rate for that portion of a Retail Electricity Supplier's Solar Renewable Energy Credit obligations that were contractually committed or renewed prior to January 1, 2010 to the RPS Class I ACP Rate for the applicable Compliance Year).